

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

FREEDOM FROM RELIGION FOUNDATION
and TRIANGLE FFRF,

Plaintiffs,

v.

DANIEL I. WERFEL, Acting Commissioner of the
Internal Revenue Service,

Defendant.

ORDER

12-cv-946-bbc

In an order dated August 22, 2013, dkt. #18, I directed plaintiffs Freedom from Religion Foundation and Triangle FFRF to show cause why I should not dismiss their complaint as to one of their claims for lack of standing. In particular, I questioned plaintiffs' standing to challenge the exemption churches receive from a requirement imposed on other nonprofit organizations to file a "detailed application" and pay a fee before receiving tax exempt status.

The problem was that plaintiffs were seeking to enjoin preferential treatment for churches, but they did not identify an ongoing injury. Their only alleged injury was that they had been required to prepare an application and pay a fee, but they were not seeking a return of the fee or any other damages. Thus, even if plaintiffs prevailed on their claim, it would not redress their injury. O'Shea v. Littleton, 414 U.S. 488, 495-96 (1974) ("Past

exposure to illegal conduct does not in itself show a present case or controversy regarding injunctive relief, however, if unaccompanied by any continuing, present adverse effects.”). Although the government had raised this issue in the context of briefing its motion to dismiss, I gave plaintiffs an opportunity to address it because it was raised for the first time in the government’s reply brief.

I gave plaintiffs a deadline of August 30, 2013, but plaintiffs failed to respond to the order or an ask for an extension of time. I will construe plaintiff’s silence as a concession that they do not have standing to bring this claim.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendant Daniel Werfel, dkt., #7, is GRANTED with respect to the claim that church exemptions from application requirements are unconstitutional. Plaintiffs’ complaint is DISMISSED as to that claim for lack of subject matter jurisdiction.

Entered this 10th day of September, 2013.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge